

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SMITHKLINE BEECHAM CORPORATION D/B/A
GLAXOSMITHKLINE and
MCKESSON CORPORATION

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Rose Hefner, representative of Irving Hefner (deceased), Deborah Citrano Johnson, representative of Stephen Citrano (deceased)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

CIVIC CENTER COURTHOUSE, 400 McAllister Street, San Francisco,
CA 94102

CASE NUMBER:
(Número del caso)
C C - 07 - 469525

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DAVID C. ANDERSON, THE MILLER FIRM, 108 RAILROAD AVE., ORANGE, VA 22960

TELEPHONE: 540-672-4224

Gordon Park-Li

Deborah Steppe

DATE: NOV 27 2007
(Fecha)

Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

Page 1 of 1

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CA 94102

CASE NUMBER:
(Número del Caso)
C C - 07 - 469525

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DAVID C. ANDERSON, THE MILLER FIRM, 108 RAILROAD AVE., ORANGE, VA 22960

TELEPHONE: 540-672-4224

DATE: **NOV 27 2007**
(Fecha)

Gordon Park-Li

Clerk, by _____
(Secretario)

Deborah Steppe

Deputy
(Adjunto)

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1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under:	<input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

David C. Andersen Attorney License #19409

The Miller Firm, LLC

108 Railroad Ave., Orange, VA 22960

TELEPHONE NO.: 540-672-4224

FAX NO.: 540-672-3055

ATTORNEY FOR (Name): Plaintiff

FILED
San Francisco County Superior Court

NOV 27 2007

GORDON PARK-LI, Clerk

Deborah Steppe

DEBORAH STEPPE, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102-4514
BRANCH NAME: Civic Center Courthouse

BY:

CASE NAME:
Rose Hefner, et al. v. GlaxoSmithKline & McKesson Corp.

CIVIL CASE COVER SHEET

Unlimited Limited
 (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

CGC-07-469525

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)

Real Property

Eminent domain/inverse condemnation (14)
 Other contract (37)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)
 Miscellaneous Civil Petition
 Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 16

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 11/26/2007

David C. Andersen

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10

www.courtinfo.ca.gov

Amerson Lathrop Inc.

1 DAVID C. ANDERSEN (State Bar No. 194095)
 2 THE MILLER FIRM, LLC
 3 108 Railroad Avenue
 4 Orange, VA 22960
 5 Telephone: (540) 672-4224
 6 Facsimile: (540) 672-3055
 7 Email: dandersen@doctoratlaw.com

CASE MANAGEMENT CONFERENCE SET

APR 25 2008 9:00 AM

DEPARTMENT 212

**SUMMONS ISSUED
FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO**

2007 NOV 27 PM 3:30

GORDON PARK - LI. CLERK

Deborah Steppe
 BY: *Deborah Steppe*
 DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SAN FRANCISCO

10	ROSE HEFNER AS PERSONAL	Case No. <u>C6C-07-469525</u>
11	REPRESENTATIVE OF	
12	THE ESTATE OF	COMPLAINT FOR DAMAGES
13	IRVING HEFNER (DECEASED)	AND JURY DEMAND
14		
15	DEBORAH CITRANO JOHNSON	BASED ON:
16	AS PERSONAL	
17	REPRESENTATIVE OF	1. NEGLIGENCE
18	STEPHEN CITRANO	2. NEGLIGENT FAILURE
19	(DECEASED)	TO ADEQUATELY WARN
20		NEGLIGENCE PER SE
21		4. NEGLIGENT
22		MISREPRESENTATION
23	Plaintiffs,	5. BREACH OF EXPRESS
24		WARRANTY
25		6. BREACH OF IMPLIED
26		WARRANTY
27		7. STRICT PRODUCTS LIABILITY
28		DEFECTIVE DESIGN
29		8. STRICT PRODUCTS LIABILITY
30		MANUFACTURING AND DESIGN DEFECT
31		9. STRICT PRODUCTS LIABILITY
32		FAILURE TO
33		ADEQUATELY WARN
34		10. FRAUDULENT
35	SMITHKLINE BEECHAM	MISREPRESENTATION
36	CORPORATION	11. VIOLATIONS OF CALIFORNIA
37	d/b/a GLAXOSMITHKLINE	and UNFAIR TRADE PRACTICES
38	MCKESSON CORPORATION	AND CONSUMER PROTECTION LAW
39		UNJUST ENRICHMENT
40	Defendants	13. WRONGFUL DEATH
41		14. SURVIVAL ACTION
42		15. LOSS OF CONSORTIUM
43		16. PUNITIVE DAMAGES
44		
45		

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, individually and as representatives of the decedents' estates, by attorneys, THE MILLER FIRM, LLC, as and for the Verified Complaint herein allege upon information and belief the following:

INTRODUCTION

1. Plaintiffs' decedents are all individuals who have consumed Defendant SMITHKLINE BEECHAM CORPORATION d/b/a GLAXOSMITHKLINE'S drug Avandia®.

9 2. This is an action to recover damages for personal injuries sustained by the Plaintiffs'
10 decedents as the direct and proximate result of the wrongful conduct of the Defendants,
11 SMITHKLINE BEECHAM CORPORATION d/b/a GLAXOSMITHKLINE, (hereinafter referred
12 to as "GSK") and MCKESSON CORPORATION (hereinafter referred to as "McKesson") in
13 connection with the designing, developing, manufacturing, distributing, labeling, advertising,
14 marketing, promoting, and selling of the widely-used diabetes prescription drug Avandia
15 (rosiglitazone).

16 3. Defendant GSK designed, researched, manufactured, advertised, promoted,
17 marketed, sold, and/or distributed Avandia.

18 4. Defendant McKesson is a corporation whose principal place of business is San
19 Francisco, California. McKesson distributed and sold Avandia in and throughout the State of
20 California.

JURISDICTION AND VENUE

22 5. The California Superior Court has jurisdiction over this action pursuant to California
23 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all

1 causes except those given by statute to other trial courts." The Statutes under which this action is
2 brought do not specify any other basis for jurisdiction.

3 6. The California Superior Court has jurisdiction over the Defendants because, based
4 on information and belief, each is a corporation and/or entity organized under the laws of the State
5 of California, a foreign corporation or association authorized to do business in California and
6 registered with the California Secretary of State or has sufficient minimum contacts in California, or
7 otherwise intentionally avails itself of the California market so as to render the exercise of
8 jurisdiction over it by the California courts consistent with traditional notions of fair play and
9 substantial justice.

10 7. Venue is proper in this Court pursuant to California Code of Civil Procedure Section
11 395 in that Defendant McKesson has its principal place of business in San Francisco.

12 8. Furthermore Defendants GSK and McKesson have purposefully availed themselves
13 of the benefits and the protections of the laws within the State of California. Defendant McKesson
14 has its principal place of business within the state. Defendants GSK and McKesson have had
15 sufficient contact such that the exercise of jurisdiction would be consistent with the traditional
16 notions of fair play and substantial justice.

17 9. Plaintiff's seek relief that is within the jurisdictional limits of the Court.

PARTY PLAINTIFFS

19 10. The Plaintiff Rose Hefner, surviving spouse of decedent Irving Hefner, is a natural
20 person and a resident of the State of Louisiana.

11. The Plaintiff Deborah Citrano Johnson, personal representative of decedent Stephen
Citrano, is a natural person and a resident of the State of Alabama.

PARTY DEFENDANTS

12. The Defendant, SmithKline Beecham Corporation d/b/a Glaxosmithkline, is a
3 Pennsylvania corporation which has its principal place of business at One Franklin Plaza, 200 N.
4 16th Street, Philadelphia, Pennsylvania 19102.

13. At all times material hereto, the Defendant, SmithKline Beecham Corporation d/b/a
6 GlaxoSmithKline was engaged in the business of designing, developing, manufacturing, testing,
7 packaging, promoting, marketing, distributing, labeling, and/or selling Avandia.

14. Defendant GSK includes any and all parents, subsidiaries, affiliates, divisions,
9 franchises, partners, joint ventures and organizational units of any kind, their predecessors,
10 successors and assigns and their present officers, directors, employees, agents, representatives and
11 other persons action on their behalf.

15. Plaintiffs' decedents are informed and believe, and based thereon allege, that in
committing the acts alleged herein, each and every managing agent, agent, representative and/or
employee of the defendant was working within the course and scope of said agency, representation
and/or employment with the knowledge, consent, ratification, and authorization of the Defendant
and its directors, officers and/or managing agents.

16. Upon information and belief, the Defendant, SmithKline Beecham Corporation d/b/a
Glaxosmithkline, was formed as a result of the merger of pharmaceutical corporations Glaxo
Wellcome, Inc., and SmithKline Beecham, Inc.

17. At all times material hereto, the Defendant, McKesson, was a corporation organized,
existing and doing business under and by virtue of the laws of the State of Delaware, with its
22 principal place of business in San Francisco, California. McKesson is, and at all times material to

1 this action was, authorized to do business, and was engaged in substantial commerce and business
2 under the laws of the State of California.

3 18. Defendant McKesson includes any and all parents, subsidiaries, affiliates, divisions,
4 franchises, partners, joint ventures and organizational units of any kind, their predecessors,
5 successors and assigns and their present officers, directors, employees, agents, representatives and
6 other persons action on their behalf.

7 19. Plaintiffs' decedents are informed and believe, and based thereon allege, that in
8 committing the acts alleged herein, each and every managing agent, agent, representative and/or
9 employee of the defendant was working within the course and scope of said agency, representation
10 and/or employment with the knowledge, consent, ratification, and authorization of the Defendant
11 and its directors, officers and/or managing agents.

12 20. At all times relevant to this action, Defendant McKesson packaged, distributed,
13 supplied, sold, placed into the stream of commerce, labeled, described, marketed, advertised,
14 promoted, and purported to warn or to inform users regarding the risks pertaining to, and assuaged
15 concerns about the pharmaceutical Avandia.

BACKGROUND
STATEMENT OF THE CASE

18 21. Type 2 diabetes is the most common form of diabetes, afflicting 18 million
19 Americans and 200 million people worldwide. This form of diabetes occurs when the body does
20 not make enough insulin (a hormone needed to convert sugar and other food into energy) or cannot
21 effectively use what it manages to produce.

22. Avandia, created and marketed by GSK, is designed to treat persons with Type 2
23 diabetes by helping sensitize cells to insulin, thereby greatly assisting in blood-sugar control. It also
24 is combined with metformin and sold as Advandamet. Only one other drug like it, pioglitazone,

1 sold as Actos and Actoplus, made by Takeda Pharmaceuticals, is sold in the United States. In 2006,
2 Avandia represented 37% of the U.S. market for oral diabetes treatments. Thus, the U.S. market for
3 such drugs is huge, and Avandia faces only one competitor for that market.

4 23. Avandia had a total U.S. sales of \$2.2 billion in 2006, slightly less than the \$2.6
5 billion in total U.S. sales for Actos, according to IMS Health, a healthcare information company.
6 Approximately 13 million Avandia prescriptions were filled in the U.S. last year, with a one-month
7 supply of Avandia selling for between \$90 and \$170. Avandia is critical to GSK, being the
8 company's second largest selling drug after Advair (an asthma medication).

9 24. GSK's product Avandia can cause heart injury, excessive fluid retention, fluid-
10 overload disease, liver damage, liver failure, stroke and severe injury to the heart leading to cardiac
11 arrest and death. In 2005, GSK performed an overview analysis of multiple Avandia trials, referred
12 to as a "meta-analysis", and shared the preliminary results with the Food and Drug Administration
13 ("FDA") in September 2005. Almost one year later, in August 2006, a more complete version of
14 the meta-analysis was provided to the FDA. The results of GSK's analysis showed that patients
15 taking Avandia had a 31% higher risk of adverse cardiovascular events such as heart attack due to
16 obstruction of blood flow.

17 25. GSK's Avandia can cause heart injury, excessive fluid retention, fluid-overload
18 disease, liver damage, liver failure, stroke, and severe injury to the heart leading to cardiac arrest
19 and death. Not only was GSK aware of the dangers posed by Avandia, but data from these studies
20 continued to be made available to GSK. On May 21, 2007, Dr. Steven E. Nissen, a prominent
21 cardiologist associated with the Cleveland Clinic, published a study in the New England Journal of
22 Medicine of his analysis of 42 studies comprising of approximately 28,000 people who took
23 Avandia. These were on-line databases of GSK studies that were available on the Internet. Dr.

1 Nissen's meta-analysis revealed a 43% higher risk of heart attack for those taking Avandia
2 compared to people taking other diabetes drugs or no diabetes medication, and people taking
3 Avandia suffered such adverse events at a rate of 1.99%, as opposed to 1.51% for other patients.
4 Further, Dr. Nissen's analysis showed a 64% elevated risk of death from cardiovascular disease.

5 26. Despite GSK's longstanding knowledge of these dangers, Avandia's label only
6 warns about possible heart failure and other heart problems when taken with insulin. GSK failed to
7 adequately warn and disclose to consumers that Avandia significantly increased the risk of adverse
8 cardiovascular events. Furthermore, the proper and effective use of Avandia by Plaintiffs'
9 decedents was impaired due to GSK's failure to adequately warn of Avandia's defects and GSK's
10 failure to properly and adequately set forth such warnings in Avandia's drug labeling.

11 27. GSK knew of these dangerous defects in Avandia from the many trials which it
12 performed and to which it had access and from its own analysis of these studies, but took no action
13 to adequately warn or remedy the defects, but instead concealed, suppressed and failed to disclose
14 these dangers. Even in the face of Dr. Nissen's study, GSK continues to fail to warn of these
15 dangers through revised drug labeling.

16 28. Not only has GSK failed to disclose in its labeling or advertising that Avandia is
17 actually dangerous for diabetics, GSK has represented and has continued to represent that they
18 manufacture and/or sell safe and dependable pharmaceuticals with safety as their first concern:

Like all innovative pharmaceutical companies, we carry out a series of clinical trials to test each investigational drug for the potential to become a new medicine.

Phase I trials typically involve health volunteers. *These trials study the safety of the drug and its interaction with the body*, for example, its concentration and duration in the blood following various doses, and begin to answer such questions as whether the drug inhibits or amplifies the effects of other medicines that might be taken at the same time.

1 Phase II studies enroll patients with the illness an investigational drug is designed to treat.
 2 These trials evaluate whether the drug shows favorable effects in treating an illness and seek to
 3 determine the proper dose. They provide an opportunity to explore the therapeutic potential of the
 4 drug in what may be quite different illnesses. *The evaluation of safety continues.*

5
 6 If Phase II results have been encouraging, Phase III trials, the largest part of a clinical-
 7 development program, go forward. *Phase III trials are designed to provide the substantial evidence*
 8 *of efficacy and safety required*, in addition to data from earlier-phase trials, before regulatory
 9 agencies will approve the investigational drug as a medicine and allow it to be marketed.

10
 11 <http://www.gsk.com/research/clinical/index/html> (emphasis supplied).

12
 13 29. GSK has also strongly touted their commitment to improving the quality of life: "We
 14 have a challenging and inspiring mission: to improve the qualif of human life by enabling people
 15 to do more, feel better and live longer." <http://www.gsk.com/about/index.htm>.

16
 17 30. On May 21, 2007, the FDA issued a Safety Alert on Avandia showing that there is a
 18 potentially significant risk of heart attack and heart-related deaths in patients taking Avandia.

19
 20 31. Based on these representations, upon which both Plaintiffs' decedents and Plaintiffs'
 21 decedents' prescribing physicians relied, including the omission from the Avandia labeling of the
 22 danger of increased risk of adverse cardiovascular events as a result of ingesting Avandia,
 23 Plaintiffs' decedents purchased and ingested Avandia believing that the drug would be safe and
 24 effective.

25
 26 32. In fact, however, Avandia poses significant safety risks due to defects in its chemical
 27 design and inadequate labeling.

28
 29 33. To date, GSK has failed to adequately warn or inform consumers, such as Plaintiffs'
 30 decedents or Plaintiffs' decedents' prescribing physicians, of the known defects in Avandia that can
 31 lead to increased risks of cardiovascular events, including but not limited to heart injury, excessive
 32 fluid retention, fluid-overload disease, liver damage, liver failure, stroke and severe injury to the
 33 heart leading to cardiac arrest, and death.

1 34. As a result of GSK's omissions and/or misrepresentations, Plaintiffs' decedents
2 ingested Avandia, and have suffered heart injury, excessive fluid retention, fluid-overload disease,
3 liver damage, liver failure, stroke, and severe injury to the heart leading to cardiac arrest and
4 sustained physical and financial damages including pain and suffering.

**COUNT I
NEGLIGENCE**

(Against Defendants GSK and McKesson)

35. Plaintiffs repeat and reiterate the allegations previously set forth herein.

11 36. That at all times hereinafter mentioned, Defendants were under a duty to exercise
12 reasonable care in the design manufacture, testing processing, marketing advertising, labeling,
13 packaging distribution, and sale of Avandia, and Defendants knew or should have known that
14 Avandia was not safe and that the user could sustain injuries and harm from the drug.

15 37. That Defendants GSK and McKesson negligently, recklessly, grossly negligently,
16 wantonly and willfully displayed a morally culpable and conscious disregard of the rights of others
17 in that they failed to exercise reasonable care and failed to fulfill the above-stated duty by the
18 manner that Defendants, directly and indirectly, advertised, marketed and promoted Avandia for the
19 treatment of diabetes, even though Avandia, in fact, was not reasonably safe for such use, and
20 furthermore, Defendants failed to adequately warn of the increased risk of serious cardiovascular
21 events which Defendants knew or should have known about.

22 38. That Defendants GSK and McKesson negligently, recklessly, grossly negligently,
23 wantonly and willfully displayed a morally culpable and conscious disregard of the rights of others
24 by manufacturing, distributing, selling, advertising, marketing and promoting Avandia even though
25 such drug was not safe or effective for any purpose because it caused serious cardiovascular events

1 and by failing to adequately warn the trusting public and prescribing health care providers of the
2 true, complete, and accurate risk and the lack of efficacy of Avandia.

3 39. The aforesaid incident and the injuries sustained by Plaintiffs' decedents were
4 caused by or were contributed to by the negligence, recklessness, gross negligence, wantonness,
5 willfulness, and conscious and callous disregard of the safety of the public, including Plaintiffs'
6 decedents, on the part of Defendants in the design, manufacture, distribution, advertising, marketing
7 and promoting of Avandia as being safe and effective in the treatment of diabetes, and by inducing
8 the public, including Plaintiffs' decedents and Plaintiffs' decedents' prescribing physicians, to
9 believe that Avandia was effective in the treatment of the causes and symptoms of diabetes.

10 40. Defendants GSK and McKesson failed to exercise reasonable care in the design,
11 manufacture, testing, processing, marketing, advertising, labeling, packaging, rebranding,
12 distribution and/or sale of Avandia in one or more of the following respects:

- 13 a. Designing, marketing, processing, advertising, packaging, distributing and/or selling a
14 product that defendants knew, or should have known, carried the risk of serious; life-
15 threatening side effects;
- 16 b. Failure to adequately test the product prior to placing the drug Avandia on the market;
- 17 c. Failure to use care in designing, developing and manufacturing their product so as to
18 avoid posing unnecessary health risks to users of such product;
- 19 d. Failure to conduct adequate pre-clinical testing and post-marketing surveillance to
20 determine the safety of Avandia;
- 21 e. Failure to advise consumers, such as Plaintiffs, that consumption of Avandia could result
22 in severe and disabling side effects, including but not limited to heart injury, excessive
23 fluid retention, fluid-overload disease, liver damage, liver failure and severe injury to the
24 heart leading to cardiac arrest and death.
- 25 f. Failure to advise the medical and scientific communities of the potential for severe and
26 disabling side effects, including but not limited to heart injury, excessive fluid retention,
27 fluid-overload disease, liver damage, liver failure, and severe injury to the heart leading
28 to cardiac arrest, and death.

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1 g. Failure to provide timely and/or adequate warnings about the potential health risks
2 associated with the use of Avandia; and

3 h. Any and all other acts of negligence with respect to Avandia which may be shown at
4 trial.

5 41. That at all times hereinafter mentioned, upon information and belief, the above-
6 described culpable conduct by Defendants GSK and McKesson was a proximate cause of injuries
7 sustained by Plaintiffs' decedents.

8 42. That as a result of the aforesaid occurrence, the injuries sustained by Plaintiffs'
9 decedents resulting therefrom, Plaintiffs' decedents suffered extensive monetary and pecuniary
10 losses and other compensatory damages were also incurred and paid out including necessary
11 medical, hospital, and concomitant expenses. In addition, Plaintiffs' decedents were deprived of a
12 chance for safe and effective and/or successful treatment.

13 43. By reason of the foregoing, Plaintiffs' decedents sustained damages in a sum which
14 exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter, and
15 in addition, Plaintiffs seek punitive and exemplary damages against Defendants in an amount to be
16 determined upon the trial of this matter.

17 44. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
18 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
19 relief as the Court deems proper.

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22 **COUNT II**
23 **NEGLIGENT FAILURE TO ADEQUATELY WARN**
24 (Against Defendants GSK and McKesson)

25 45. Plaintiffs repeat and reiterate the allegations previously set forth herein.

26 46. At all relevant times, defendants GSK and McKesson researched, developed,
27 designed, tested, manufactured, inspected, labeled, and/or distributed, marketed, promoted, sold,

1 and otherwise released into the stream of commerce the pharmaceutical, Avandia, and in the course
2 of same, directly advertised or marketed the product to FDA, consumers or persons responsible for
3 consumers, and therefore had a duty to warn of the risks associated with the use of Avandia.

4 47. At all relevant times, Avandia was under the exclusive control of the Defendants as
5 aforesaid, and was unaccompanied by appropriate warnings regarding all possible adverse side
6 effects and complications associated with the use of Avandia, dangerous drug-drug interactions and
7 food-drug interactions, and the comparative severity, duration and the extent of the risk of injury
8 with such use.

9 48. At all relevant times, defendants failed to timely and reasonably warn of material
10 facts regarding the safety and efficacy of Avandia so that no reasonable medical care provider
11 would have prescribed, or no consumer would have used, Avandia had those facts been made
12 known to such providers and consumers.

13 49. At all relevant times, defendants failed to perform or otherwise facilitate adequate
14 testing in that such testing would have shown that Avandia posed serious and potentially life-
15 threatening side effects and complications with respect to which full and proper warning accurately
16 and fully reflecting the symptoms, scope and severity should have been made to medical care
17 providers, the FDA and the public, including Plaintiffs' decedents.

18 50. At all relevant times, Avandia, which was researched, developed, designed, tested,
19 manufactured, inspected, labeled, distributed, marketed, promoted, sold, and otherwise released into
20 the stream of commerce by Defendants, was defective due to inadequate post-marketing warning
21 and/or instruction because, after Defendants knew or should have known of the risk of serious and
22 potentially life-threatening side effects and complications from the use of Avandia, Defendants

1 failed to provide adequate warnings to medical care providers, the FDA and the consuming public,
2 including Plaintiffs, and continued to promote Avandia aggressively.

3 51. As a direct and proximate result of Defendants' carelessness and negligence, the
4 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents
5 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
6 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
7 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
8 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
9 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
10 seek actual and punitive damages from the Defendants as alleged herein.

11 52. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
12 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
13 relief as the Court deems proper.

COUNT III
NEGLIGENCE PER SE
(Against Defendants GSK and McKesson)

18 53. Plaintiffs repeat and reiterate the allegations previously set forth herein.

19 54. At all times mentioned herein, Defendants GSK and McKesson had an obligation not

20 to violate the law, in the manufacture, design, formulation, compounding, testing, production,

21 processing, assembling, inspection, research, distribution, marketing, labeling, packaging

22 preparation for use, sale and warning of the risks and dangers of the aforementioned product.

23 55. At all times herein mentioned, Defendants violated the Federal Food, Drug and
24 Cosmetic Act, 21 U.S.C. Section 301 *et seq.*, related amendments and codes and federal regulations
25 provided thereunder, and other applicable laws, statutes and regulations.

1 56. Plaintiffs' decedents, as purchasers and consumers of the product, are within the
2 class of persons the statutes and regulations described above are designed to protect, and the injuries
3 alleged herein are the type of harm these statutes are designed to prevent.

4 57. Defendants' acts constitute an adulteration and/or misunderstanding as defined by
5 the Federal Food, Drug and Cosmetics Act, 21 U.S.C. § 331, and constitutes a breach of duty
6 subjecting Defendants to civil liability for all damages arising therefrom, under theories of
7 negligence *per se*.

8 58. Defendants failed to meet the standard of care set by the applicable statutes and
9 regulations, which were intended for the benefit of individuals such as Plaintiffs' decedents, making
10 Defendants negligent *per se*: (a) the labeling lacked adequate information on the use of the drug
11 Avandia; (b) the labeling failed to provide adequate warnings of severe and disabling medical
12 conditions as soon as there was reasonable evidence of their association with the drug; (c) there was
13 inadequate information for patients for the safe and effective use of Defendants' drug; (d) there was
14 inadequate information regarding special care to be exercised by the doctor for safe and effective
15 use of Defendants' drug; and (e) the labeling was misleading and promotional.

16 59. As a direct and proximate result of Defendants' carelessness and negligence, the
17 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents
18 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
19 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
20 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
21 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
22 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
23 seek actual and punitive damages from the Defendants as alleged herein.

1 60. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
2 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
3 relief as the Court deems proper.

COUNT IV
NEGIGENT MISREPRESENTATION
(Against Defendants GSK and McKesson)

8 61. Plaintiffs repeat and reiterate the allegations previously set forth herein.

9 62. Defendants GSK and McKesson, in addition to knowing misrepresentations, made

10 misrepresentations without any reasonable grounds for believing its statements to be true to

11 Plaintiffs' decedents, other patients, and the medical community.

12 63. Defendants GSK and McKesson, through their misrepresentations, intended to

13 induce justifiable reliance by Plaintiffs' decedents, other patients, and the medical community.

14 64. Defendants GSK and McKesson, through their marketing campaign and

15 communications with treating physicians, were in a relationship so close to that of Plaintiffs'

16 decedents and other patients that it approaches and resembles privity.

17 65. Defendants GSK and McKesson owed a duty to the medical community, Plaintiffs'

18 decedents, and other consumers, to conduct appropriate and adequate studies and tests for all

19 products, including Avandia, and to provide appropriate and adequate information and warnings.

20 66. Defendants failed to conduct appropriate or adequate studies for Avandia.

21 67. Defendants failed to exercise reasonable care by failing to conduct studies and tests

22 of Avandia.

23 68. As a direct and proximate result of Defendants' carelessness and negligence, the

24 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents

25 endured substantial pain and suffering and underwent extensive medical and surgical procedures.

1 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
2 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
3 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
4 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
5 seek actual and punitive damages from the Defendants as alleged herein.

COUNT V
BREACH OF EXPRESS WARRANTY
(Against Defendants GSK and McKesson)

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13 70. Plaintiffs repeat and reiterate the allegations previously set forth herein.

14 71. Defendants GSK and McKesson expressly represented to Plaintiffs' decedents and
15 other consumers and the medical community that Avandia was safe and fit for its intended
16 purposes, that is was of merchantable quality, that it did not produce any dangerous side effects, and
17 that it was adequately tested.

18 72. Avandia does not conform to Defendants' express representations because it is not
19 safe, has numerous and serious side effects, and causes severe and permanent injuries.

20 73. At all relevant times Avandia did not perform as safely as an ordinary consumer
21 would expect, when used as intended or in a reasonably foreseeable manner.

22 74. Plaintiffs' decedents, other consumers, and the medical community relied upon
23 Defendants' express warranties.

24 75. As a direct and proximate result of Defendants' breach of express warranty, the
25 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents

1 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
2 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
3 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
4 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
5 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
6 seek actual and punitive damages from the Defendants as alleged herein.

7 76. Defendants' conduct as described above was committed with knowing, conscious,
8 wanton, willful, and deliberate disregard for the value of human life and the rights and safety of
9 consumers such as Plaintiffs' decedents, thereby entitling Plaintiffs to punitive damages so as to
10 punish them and deter it from similar conduct in the future.

11 77. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
12 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
13 relief as the Court deems proper.

14 **COUNT VI**
15 **BREACH OF IMPLIED WARRANTY**
16 (Against Defendants GSK and McKesson)

17 78. Plaintiffs repeat and reiterate the allegations previously set forth herein.

18 79. The Defendants GSK and McKesson marketed, distributed, supplied and sold the
19 subject product for the treatment of diabetes.

20 80. At the time that the Defendants GSK and McKesson marketed, distributed, supplied,
21 and sold Avandia, they knew of the use for which the subject product was intended and impliedly
22 warranted it to be of merchantable quality and safe and fit for such use.

23 81. The Plaintiffs' decedents, individually and through prescribing physicians,
24 reasonably relied upon the skill, superior knowledge and judgment of the Defendants.

1 82. The Plaintiffs' decedents were prescribed, purchased, and used the subject product
2 for its intended purpose.

3 83. Due to Defendants' wrongful conduct as alleged herein, the Plaintiffs' decedents
4 could not have known about the nature of the risks and side effects associated with the subject
5 product until after use.

6 84. Contrary to the implied warranty for the subject product, Avandia was not of
7 merchantable quality, and was not safe or fit for its intended uses and purposes as alleged herein.

8 85. As a direct and proximate result of Defendants' breach of implied warranty, the
9 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents
10 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
11 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
12 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
13 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
14 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
15 seek actual and punitive damages from the Defendants as alleged herein.

16 86. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
17 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
18 relief as the Court deems proper.

COUNT VII
STRICT PRODUCTS LIABILITY – DEFECTIVE DESIGN
(Against Defendants GSK and McKesson)

22 Plaintiffs repeat and reiterate the allegations previously set forth herein.
23

1 88. At all times material to this action, the Defendants were responsible for designing,
2 developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or
3 selling Avandia.

4 89. The subject product is defective and unreasonably dangerous to consumers.

5 90. Avandia is defective in its design or formulation in that it is not reasonably fit,
6 suitable, or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated
7 with its design and formulation.

8 91. At all times material to this action, Avandia was expected to reach, and did reach,
9 consumers in this jurisdiction and through the United States, including the Plaintiffs' decedents
10 herein, without substantial change in the condition in which it was sold.

11 92. At all times material to this action, Avandia was designed, developed, manufactured,
12 tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective
13 and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways
14 which include, but are not limited to, one or more of the following particulars:

15 a. When placed in the stream of commerce, Avandia contained unreasonably dangerous
16 design defects and was not reasonably safe as intended to be used, subjecting the Plaintiffs'
17 decedents to risks that exceeded the benefits of the subject product, including but not limited to the
18 risks of developing heart injury, excessive fluid retention, fluid-overload disease, liver damage,
19 liver failure, stroke and severe injury to the heart leading to cardiac arrest and death and other
20 serious injuries and side effects in an unacceptably high number of its users;

21 b. When placed in the stream of commerce, Avandia was defective in design and
22 formulation, making the use of Avandia more dangerous than an ordinary consumer would expect,

1 and more dangerous than other risks associated with the other medications and similar drugs on the
2 market for the treatment of diabetes;

- 3 c. The subject product's design defects existed before it left the control of the Defendants;
- 4 d. Avandia was insufficiently tested;
- 5 e. Avandia caused harmful side effects that outweighed any potential utility; and
- 6 f. Avandia was not accompanied by adequate instructions and/or warnings to fully apprise
7 consumers, including the Plaintiffs' decedents herein, of the full nature and extent of the risks and
8 side effects associated with its use, thereby rendering Defendants liable to Plaintiffs, individually
9 and collectively.

10 93. In addition, at the time the subject product left the control of the Defendants, there
11 were practical and feasible alternative designs that would have prevented and/or significantly
12 reduced the risk of Plaintiffs' decedents' injuries without impairing the reasonably anticipated or
13 intended function of the product. These safer alternative designs were economically and
14 technologically feasible, and would have prevented or significantly reduced the risk of Plaintiffs'
15 decedents' injuries without substantially impairing the product's utility.

16 94. As a direct and proximate result of the subject product's defective design, the
17 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents
18 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
19 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
20 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
21 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
22 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
23 seek actual and punitive damages from the Defendants as alleged herein.

1 95. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
2 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
3 relief as the Court deems proper.

COUNT VIII

STRICT PRODUCTS LIABILITY – MANUFACTURING AND DESIGN DEFECT
(Against Defendants GSK and McKesson)

96. Plaintiffs repeat and reiterate the allegations previously set forth herein.

9 97. At all times material to this action, Defendants were engaged in the business of
10 designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing,
11 labeling, and/or selling Avandia.

12 98. At all times material to this action, Avandia was expected to reach, and did reach,
13 consumers in this jurisdiction and throughout the United States, including the Plaintiffs herein
14 without substantial change in the condition in which it was sold.

15 99. At all times material to this action, Avandia was designed, developed, manufactured,
16 tested, packaged, promoted, marketed, distributed, labeled, and/or sold by Defendants in a defective
17 and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways
18 which include, but are not limited to, one or more of the following particulars:

19 a. When placed in the stream of commerce, Avandia contained manufacturing defects
20 which rendered the product unreasonably dangerous;

21 b. The subject product's manufacturing defects occurred while the product was in the
22 possession and control of the Defendants;

23 c. The subject product was not made in accordance with the Defendants' specifications and
24 performance standards;

1 d. The subject product's manufacturing defects existed before it left the control of the
2 Defendants;

3 100. As a direct and proximate result of the subject product's manufacturing defects, the
4 Plaintiffs' decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents
5 endured substantial pain and suffering and underwent extensive medical and surgical procedures.
6 Plaintiffs' decedents incurred significant expenses for medical care and treatment. Plaintiffs'
7 decedents have lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have
8 suffered economic loss, and have otherwise been physically, emotionally and economically injured.
9 The Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs
10 seek actual and punitive damages from the Defendants as alleged herein.

11 101. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
12 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
13 relief as the Court deems proper.

COUNT IX

STRICT PRODUCTS LIABILITY – FAILURE TO ADEQUATELY WARN
(Against Defendants GSK and McKesson)

18 102. Plaintiffs repeat and reiterate the allegations previously set forth herein.

19 103. Avandia was defective and unreasonably dangerous when it left the possession of the
20 Defendants in that it contained warnings insufficient to alert consumers, including the Plaintiffs'
21 decedents herein, of the dangerous risks and reactions associated with the subject product, including
22 but not limited to its propensity to cause heart injury, excessive fluid retention, fluid-overload
23 disease, liver damage, liver failure, stroke and severe injury to the heart leading to cardiac arrest and
24 death and other serious injuries and side effects over other forms of diabetes treatment.

1 104. The Plaintiffs' decedents were prescribed and used the subject product for its
2 intended purpose.

3 105. The Plaintiffs' decedents could not have discovered any defect in the subject product
4 through the exercise of reasonable care.

5 106. The Defendants GSK and McKesson, as manufacturers and/or distributors of the
6 subject prescription product, are held to the level of knowledge of an expert in the field.

7 107. The warnings that were given by the Defendants GSK and McKesson were not
8 accurate, clear and/or were ambiguous.

9 108. The warnings that were given by the Defendants GSK and McKesson failed to
10 properly warn physicians of the increased risks of heart injury, excessive fluid retention, fluid-
11 overload disease, liver damage, liver failure, stroke and severe injury to the heart leading to cardiac
12 arrest and death and other serious injuries and side effects.

13 109. The warnings that were given by the Defendants GSK and McKesson failed to
14 properly warn consumers of the increased risks of heart injury, excessive fluid retention, fluid-
15 overload disease, liver damage, liver failure, stroke and severe injury to the heart leading to cardiac
16 arrest and death and other serious injuries and side effects.

17 110. The Plaintiffs' decedents, individually and through prescribing physicians,
18 reasonably relied upon the skill, superior knowledge and judgment of the Defendants.

19 111. The Defendants GSK and McKesson had a continuing duty to adequately warn the
20 Plaintiffs' decedents of the dangers associated with the subject product and of the poor efficacy of
21 the product.

1 112. Had the Plaintiffs' decedents and/or Plaintiffs' decedents' prescribing physicians
2 received adequate warnings regarding the risks, and the lack of benefits, of the subject product,
3 Plaintiffs' decedents would not have used it.

4 113. As a proximate result of the subject product's manufacturing defects, the Plaintiffs'
5 decedents suffered severe and permanent physical injuries. The Plaintiffs' decedents endured
6 substantial pain and suffering and underwent extensive medical and surgical procedures. Plaintiffs'
7 decedents incurred significant expenses for medical care and treatment. Plaintiffs' decedents have
8 lost past earnings and have suffered a loss of earning capacity. The Plaintiffs have suffered
9 economic loss, and have otherwise been physically, emotionally and economically injured. The
10 Plaintiffs' injuries and damages are permanent and will continue into the future. The Plaintiffs seek
11 actual and punitive damages from the Defendants as alleged herein.

12 114. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
13 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
14 relief as the Court deems proper.

COUNT X
FRAUDULENT MISREPRESENTATION
(Against Defendants GSK and McKesson)

18 115. Plaintiffs repeat and reiterate the allegations previously set forth herein.
19
20 116. Defendants GSK and McKesson widely advertised and promoted Avandia as a safe
21 and effective medication both in direct-to-consumer marketing and in fraudulent promotion to the
22 health care providers including Plaintiffs' decedents prescribing physicians.
23
24 117. Defendants GSK and McKesson had a duty to disclose material information about
25 serious side effects to consumers such as Plaintiffs. Additionally by virtue of Defendants' partial
disclosures about the medication, in which Defendants touted Avandia as safe and effective

1 treatment, Defendants had a duty to disclose all facts about the risks of use associated with the
2 medication, including the potential for the medication to cause heart injury, excessive fluid
3 retention, fluid-overload disease, liver damage, liver failure, stroke and severe injury to the heart
4 leading to cardiac arrest, and death. Defendants intentionally failed to adequately disclose this
5 information for the purpose of inducing consumers, such as Plaintiffs' decedents, to purchase
6 Defendants' dangerous product.

7 118. Had Plaintiffs been aware of the hazards associated with Avandia, Plaintiffs'
8 decedents would not have consumed the product that lead proximately to Plaintiffs' decedents'
9 adverse health effects.

10 119. Defendants' advertisements regarding Avandia made material misrepresentations to
11 the effect that Avandia was a safe and effective treatment, which misrepresentations Defendant
12 knew to be false, for the purpose of fraudulently inducing consumers, such as Plaintiffs' decedents,
13 to purchase such product. Plaintiffs' decedents relied in part on these material misrepresentations in
14 deciding to purchase and consume Avandia to their detriment.

15 120. The damages sustained by Plaintiffs' decedents were a direct and foreseeable result
16 of, and were proximately caused by Defendants' misrepresentations, concealment and omissions.

17 121. Defendants' conduct was willful, wanton, and reckless. Based on the intentionally
18 dishonest nature of Defendants' conduct, which was directed at Plaintiffs' decedents and the public
19 generally, Defendants should also be held liable for punitive damages.

20 122. Any applicable statutes of limitation have been tolled by Defendants' knowing and
21 active concealment and denial of the facts alleged herein. Plaintiffs' decedents and other members
22 of the public who were prescribed and who ingested Avandia for the treatment of diabetes have
23 been kept in ignorance of vital information essential to the pursuit of these claims, without any fault

1 or lack of diligence on their part, and could not reasonably have discovered the fraudulent nature of
2 Defendants' conduct, and information and documents concerning the safety and efficacy of
3 Avandia. Furthermore, due to the aforesaid allegations, Plaintiffs' decedents may rely on the
4 discovery rule in pursuit of this claim.

5 123. By reason of the foregoing, Plaintiffs' decedents sustained damages in a sum which
6 exceeds the jurisdictional limits of all lower courts which would have jurisdiction of this matter, and
7 in addition thereto, Plaintiffs seek punitive and exemplary damages against Defendants in an
8 amount to be determined upon the trial of this matter.

9 124. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
10 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
11 relief as the Court deems proper.

12 **COUNT XI**
13 **VIOLATIONS OF CALIFORNIA UNFAIR TRADE PRACTICES AND CONSUMER**
14 **PROTECTION LAW**
15 (Against Defendants GSK and McKesson)

16 125. Plaintiffs repeat and reiterate the allegations previously set forth herein.

17 126. Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Cal. Bus. & Prof. Code § 17200, et seq. and the Consumer Legal Remedies
19 Act, Civ. Code § 1750 et seq. ("CLRA")

20 127. Defendants GSK and McKesson acted, used and employed deception, unfair and
21 deceptive acts and practices, fraud, false promises, misrepresentations, concealment, suppression
22 and omission of material facts with intent that physicians and medical providers rely upon such
23 concealment, suppression and omission, and for the purpose of influencing and inducing physicians
24 and medical providers to prescribe Avandia, for the treatment of diabetes to patients/consumers
25 such as Plaintiffs' decedents, and causing such patients/consumers to purchase, acquire and use
26

1 Avandia for the treatment of diabetes, as prescribed by their physicians and medical providers, in
2 connection with the sale and advertisement of the drug Avandia, in violation of California law.

3 128. By reason of Defendants' acts, uses and employment of deception, unfair and
4 deceptive acts and practices, fraud, false promises, misrepresentations, concealment, suppression
5 and omission of material facts, reasonable patients/consumers acting reasonably, such as Plaintiffs'
6 decedents, were caused to purchase and ingest Avandia, and thereby sustain serious personal
7 injuries.

8 129. By reason of the foregoing, Plaintiffs sustained damages in a sum which exceeds the
9 jurisdictional limits of all lower courts which would have jurisdiction of this matter, and in addition
10 thereto, Plaintiffs seek punitive and exemplary damages against Defendants in an amount to be
11 determined upon the trial of this matter.

12 **COUNT XII**
13 **UNJUST ENRICHMENT**

14 (Against Defendants GSK and McKesson)

15 130. Plaintiffs repeat and reiterate the allegations previously set forth herein.

16 131. To the detriment of Plaintiffs' decedents the Defendants GSK and McKesson have
17 been, and continue to be, unjustly enriched as a result of the unlawful and/or wrongful collection of,
18 inter alia, payments for Avandia.

19 132. Plaintiffs' decedents were injured by the cumulative and indivisible nature of the
20 Defendants' conduct. The cumulative effect of the Defendants' conduct directed at physicians and
21 consumers was to artificially create a demand for Avandia at an artificially inflated price. Each
22 aspect of the Defendants' conduct combined to artificially create sales of Avandia.
23

1 133. The Defendants GSK and McKesson have unjustly benefited through the unlawful
2 and/or wrongful collection of, inter alia, payments for Avandia and continue to so benefit to the
3 detriment and at the expense of Plaintiffs.

4 134. Accordingly, Plaintiffs seek full disgorgement and restitution of the Defendants'
5 enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful and/or wrongful
6 conduct alleged herein.

7 135. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
8 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
9 relief as the Court deems proper.

10 COUNT XIII
11 WRONGFUL DEATH

12 (Against Defendants GSK and McKesson)

13 136. Plaintiffs repeat and reiterate the allegations previously set forth herein.

14 137. As a result of the acts and/or omissions of the Defendants as set forth herein,
15 Plaintiffs' decedents suffered serious emotional and bodily injuries resulting in death.

16 138. Plaintiff Deborah Citrano Johnson, as designated personal representative of Stephen
17 Citrano, is entitled to recover damages as decedent would have if he were living, as a result of the
18 acts and/or omissions of the Defendants as specifically pled, herein pursuant to Cal. Code Civ. Proc.
19 § 377.60.

20 139. Plaintiff Rose Hefner, as decedent's surviving spouse, is entitled to recover damages
21 as decedent would have if he were living, as a result of the acts and/or omissions of the Defendants
22 as specifically pled, herein pursuant to Cal. Code Civ. Proc. § 377.60.

140. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

COUNT XIV
SURVIVAL ACTION

(Against Defendants GSK and McKesson)

141. Plaintiff's repeat and reiterate the allegations previously set forth herein.

9 142. As a result of the actions and inactions of the Defendants, Plaintiffs' decedents were
10 caused harm and suffering before their death.

11 143. Plaintiffs in their own right and as personal representatives of the decedents' estates
12 seek damages compensable under Cal. Code Civ. Proc. § 377.30.

13 144. Plaintiffs are potential beneficiaries of this action as surviving heirs, making them
14 the decedents' successors in interest under Cal. Code Civ. Proc. § 377.30.

145. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
146 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
147 relief as the Court deems proper.

COUNT XV
LOSS OF CONSORTIUM
(Against Defendants GSK and McKesson)

146. Plaintiffs repeat and reiterate the allegations previously set forth herein.

23 147. In cases where Plaintiffs' decedents were married at the time of their respective
24 injuries, the spouses of such Plaintiffs were entitled to their comfort, care, affection,
25 companionship, services, society, advice, guidance, counsel, and consortium.

26 148. As a direct and proximate result of one or more of those wrongful acts or omissions
27 of the Defendants described above, Plaintiffs' decedents' spouses have been and will be deprived of

1 their comfort, care, affection, companionship, services, society, advice, guidance, counsel and
2 consortium.

3 WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
4 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
5 relief as the Court deems proper.

6 **COUNT XVI**
7 **PUNITIVE DAMAGES**

8 (Against Defendants GSK and McKesson)

9 150. Plaintiffs repeat and reiterate the allegations previously set forth herein.

10 151. At all times material hereto, the Defendants GSK and McKesson knew or should
11 have known that the subject product was inherently more dangerous with respect to the risks of
12 heart injury, excessive fluid retention, fluid-overload disease, liver damage, liver failure, stroke, and
13 severe injury to the heart leading to cardiac arrest, and death than alternative treatments for
14 diabetes.

15 152. At all times material hereto, the Defendants GSK and McKesson attempted to
16 misrepresent and did misrepresent facts concerning the safety of the subject product.

17 153. Defendants' misrepresentations included knowingly withholding material
18 information from the medical community and the public, including the Plaintiffs' decedents herein,
19 concerning the safety of the subject product.

20 154. At all times material hereto, the Defendants GSK and McKesson knew and
21 recklessly disregarded the fact that Avandia causes debilitating and potentially lethal side effects
22 with greater frequency than safer alternative methods of treatment for diabetes.

23 155. Notwithstanding the foregoing, the Defendants GSK and McKesson continued to
24 aggressively market the subject product to consumers, including the Plaintiffs' decedents herein,

1 without disclosing the aforesaid side effects when there were safer alternative methods of treatment
2 for diabetes.

3 156. The Defendants GSK and McKesson knew of the subject product's defective and
4 unreasonably dangerous nature, as set forth herein, but continued to design, develop, manufacture,
5 market, distribute and sell it so as to maximize sales and profits at the expense of the health and
6 safety of the public, including the Plaintiffs' decedents herein, in conscious and/or negligent
7 disregard of the foreseeable harm caused by Avandia.

8 157. Defendants GSK and McKesson intentionally concealed and/or recklessly failed to
9 disclose to the public, including the Plaintiffs' decedents herein, the potentially life threatening side
10 effects of Avandia in order to ensure continued and increased sales.

11 158. The Defendants' intentional and/or reckless failure to disclose information deprived
12 the Plaintiffs' decedents of necessary information to enable Plaintiffs' decedents to weigh the true
13 risks of using the subject product against its benefits.

14 159. As a direct and proximate result of the Defendants' conscious and deliberate
15 disregard for the rights and safety of consumers such as the Plaintiffs, the Plaintiffs' decedents
16 suffered severe and permanent physical injuries. The Plaintiffs' decedents endured substantial pain
17 and suffering and underwent extensive medical and surgical procedures. Plaintiffs' decedents
18 incurred significant expenses for medical care and treatment. Plaintiffs' decedents have lost past
19 earnings and have suffered a loss of earning capacity. The Plaintiffs have suffered economic loss,
20 and have otherwise been physically, emotionally and economically injured. The Plaintiffs' injuries
21 and damages are permanent and will continue into the future. The Plaintiffs seek actual and
22 punitive damages from the Defendants as alleged herein.

5 161. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory,
6 treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other
7 relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against Defendants as follows:

- 10 (1) Judgment for Plaintiffs and against defendants;

11 (2) Damages in the form of compensatory damages in excess of the jurisdictional limits,
12 trebled on all applicable counts;

13 (3) Physical pain and suffering of the Plaintiffs

14 (4) Pre and post judgment interest at the lawful rate;

15 (5) Reasonably attorneys' fees and costs and expert fees;

16 (6) A trial by jury on all issues of the case;

17 (7) For any other relief as this court may deem equitable and just;

18 (8) Restitution of all purchase costs that Plaintiffs paid for Avandia disgorgement of
19 Defendants' profits, and such other relief as provided by law;

20 (9) Exemplary and punitive damages in an amount in excess of the jurisdictional limits,
21 trebled on all applicable counts;

22 (10) All Bill of Costs elements; and

23 (11) Such other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims so triable in this action.

1 Dated: November 26, 2007

Respectfully submitted,

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4
David C. Andersen
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6 David C. Andersen (Bar No. 194095)
7 THE MILLER FIRM, LLC
8 Attorneys for Plaintiffs
9 108 Railroad Avenue
10 Orange, VA 22960
11 Phone: (540) 672-4224
12 Fax: (540) 672-3055
13 Email:dandersen@doctoratlaw.com